



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, LRE, FFT

Introduction

On August 18, 2021, the Tenant made an Application for Dispute Resolution seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “Act”), seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 8, 2021, this Application was originally set down to be heard on December 21, 2021. This Application was subsequently adjourned for reasons set forth in the Interim Decision dated December 22, 2021. This Application was then set down for a final, reconvened hearing on March 31, 2022 at 9:30 AM.

Both the Tenant and the Landlord attended the reconvened hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed at the original hearing. As such, I have accepted the parties’ evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 3, 2020, and that the tenancy ended on November 1, 2021, when the Tenant gave up vacant possession of the rental unit. Rent was established at an amount of \$2,250.00 per month and was due on the first day of each month. A security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that he is seeking compensation in the amount of **\$2,194.00** because the Landlord took down a fence and encroached on the Tenant's outdoor space, starting on July 15, 2021 until he gave up vacant possession of the rental unit on November 1, 2021. He advised that he lost privacy, safety, and use of the areas of the yard that were included as part of the tenancy. He stated that the amount being sought was calculated as \$400.00 per month from July 15, 2021 to December 31, 2021, despite vacating the rental unit on November 1, 2021. He referenced the documentary evidence to support this position.

The Landlord advised that the previous owner stored a boat in the yard and that it was his belief that this portion of the yard was shared. He confirmed that he took fences down, that he installed a concrete pad in the area he believed was shared with the Tenant, and that he encroached on areas that were for the exclusive use of the Tenant. However, it was his intention to improve the area, and then it give back to the Tenant when it was completed.

The Tenant advised that he is seeking compensation in the amount of **\$1,500.00** because the Landlord began construction in the yard and disturbed his right to quiet enjoyment. This began on July 15, 2021 and ended on August 31, 2021. He submitted that the Landlord's construction crew occupied a significant portion of the backyard, that they did not clean up after themselves, and that he was unable to enjoy the use of his backyard in the same manner that he used to. He stated that the amount being sought was calculated as \$1,000.00 per month for this time period. He referenced the documentary evidence to support this position.

The Landlord advised that his construction crew only used a small portion of the yard, and that the frequency of this was intermittent. He estimated that the loss of use of the yard was approximately 30% and that his crew were diligent in cleaning up, especially when they were informed of deficiencies by the Tenant. He stated that the Tenant's claim is equivalent to 85% of the rent for this time period and that this is not comparable to the loss suffered.

The Tenant advised that he is seeking compensation in the amount of **\$1,200.00** because he lost the use of his carport entirely from July 15 to August 31, 2021, and then partially over the next two months due to the Landlord's ongoing construction project. He stated that the amount being sought was calculated as \$400.00 per month for the period of approximately three months. He referenced the documentary evidence to support this position.

The Landlord confirmed that he did remove the Tenant's access to the carport and that he did not provide the Tenant with alternate parking, but this loss was closer to two months, rather than three months. He stated that he himself never had issues with parking on the street. However, he took issue with the Tenant's claim for compensation in the amount of \$400.00 per month as parking downtown in a heated garage would cost approximately \$100.00 per month.

The Tenant advised that he is seeking compensation in the amount of **\$2,000.00** because the Landlord took away his use of the 400 square foot deck, on September 1, 2021, that was included as part of his tenancy. He was not able to use this deck from this point until he gave up vacant possession of the rental unit on November 1, 2021. He stated that the amount being sought was calculated as \$500.00 per month for the period of approximately four months, despite vacating the rental unit on November 1, 2021. He referenced the documentary evidence to support this position.

The Landlord advised that he had to restrict access to the deck because it was discovered that the deck was rotting when the work was being done in the carport. Due to the significant concerns of the deck collapsing, the Tenant's access to the deck was restricted. He stated that a more reasonable estimate of this loss was closer to \$200.00 per month. He submitted that the Tenant was provided with compensation in the amount of \$2,250.00, but this was not related to any losses suffered during the tenancy and was offered as an incentive for signing a mutual agreement to end the tenancy.

The Tenant advised that he is seeking compensation in the amount of **\$5,200.00** because the Landlord's continued invasion of his privacy and failure to give the proper written notice to enter the property. He stated that he was negatively impacted by the Landlord's method of operating on the property with impunity, while neglecting the Tenant's rights. He stated that the amount being sought was calculated as \$800.00 per month for the period of approximately six and a half months starting on June 15, 2021 and ending on December 31, 2021, despite vacating the rental unit on November 1, 2021. He referenced the documentary evidence to support this position.

The Landlord advised that there were interactions with the Tenant regarding the Tenant's concerns; however, he made attempts to work with the Tenant to address these adequately. It is his belief that he attempted to provide the Tenant with as much notice as possible to complete the ongoing projects.

Finally, the Tenant advised that he is seeking compensation in the amount of **\$10,050.00** because of his time spent educating himself of the rights and obligations of Tenants and Landlords under the *Act*, preparing for Dispute Resolution, finding a new place to rent, and cleaning up after the Landlord's construction crew. He stated that the amount being sought was calculated as \$150.00 per month (the amount of his consulting fee) multiplied by the 67 hours he spent conducting these activities.

The Landlord advised that the Tenant's claims are blown out of proportion as this is equivalent to \$2,720.00 per month in rent. He confirmed that it was not a perfect process when his construction crew was conducting the work, but they were asked to do their best to keep the worksite clean. He also stated that he would attempt to address the Tenant's concerns when they were brought up. He submitted that he rented a magnetic broom to sweep the grass for nails.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the Landlord acknowledged breaching the *Act* and reducing areas of the rental unit that were the exclusive use of the Tenant. However, when assessing the

Tenant's claims for compensation for some of these breaches, I find it important to note that his rent was \$2,250.00 per month, that the breaches of the *Act* started on or around July 15, 2021, and that the Tenant gave up vacant possession of the rental unit on November 1, 2021. As such, the total amount of rent paid for this period would be approximately \$10,125.00.

As a frame of reference, a claim in the amount of \$10,125.00 would equate to a loss where the Tenant would have been entirely unable to live in the rental unit, and thus, would have received zero value for the affected period due to the alleged breaches. However, there was insufficient evidence supporting that the Tenant was unable to live in the rental unit during this time.

Furthermore, I find it important to note that the total amount of compensation being sought by the Tenant is \$22,144.00. Given that this number is so grossly disproportionate compared to the actual amount of rent owed for the affected period of the breaches, I reject these amounts as they do not even represent a reasonable estimation of the Tenant's losses for those breaches. In addition, given that the Tenant's description of losses somewhat overlapped, the Tenant was essentially claiming for the same losses repeatedly, but just framed differently. This appears to be a flagrant attempt to double dip and is likely a reason why the claim amounts exceeded what was even owed in rent.

Moreover, the Tenant made claims for compensation for a time period after he had given up vacant possession of the rental unit, which does not make any logical sense. In my view, it appears as if the Tenant has based his claims for compensation on an emotional reaction to how he perceived that these breaches affected him, as opposed to a rational, reasonable estimation of his actual loss.

As the burden of proof is on the Tenant to establish the amount of compensation owed, and as the Tenant has failed to do so in this regard because of the excessive and disproportionate nature of the claims, I reject the amounts that he is claiming. Clearly, this exorbitant amount appears to have been created to give the allusion of "sticker shock" in an attempt to emphasize his belief of the significance of the breaches. However, I find that this actually had the opposite effect, and these claims were such a reach, that they come across as verging on vexatious.

This mentality is entirely evident in the Tenant's claim for compensation in the amount of \$10,050.00. Firstly, the Tenant did not provide any documentary evidence to support his alleged hourly rate for whatever his chosen vocation was. Secondly, the Tenant was

attempting to claim for activities such as educating himself on the rights and responsibilities under the *Act* and for preparing himself for Dispute Resolution. There are no provisions under the *Act* to compensate a party for obtaining knowledge or for preparing oneself for Dispute Resolution, especially given that the Tenant initiated this claim. Thirdly, even if I were to consider these claims as legitimate, the Tenant did not submit any documentary evidence demonstrating that by involving himself in these other activities, it directly took away from whatever time he could have been spending on whatever his chosen profession was. I find that the Tenant's rationale for these claims is so beyond reasonable, that it is clear that this was a further blatant attempt to stick it to the Landlord because of his dissatisfaction. I find that parts of this claim are so obviously frivolous that it calls into question the reliability of any actual legitimate loss suffered. Ultimately, I dismiss this claim in its entirety.

Regardless, as I am satisfied that the Landlord intentionally breached the *Act* on several occasions, I accept that the Tenant is entitled to some compensation for his losses. However, as the Tenant's claims were so misaligned with what would be considered reasonable, and as they were also overlapping, I do not find that he has substantiated any amount close to what he was seeking. As such, I grant the Tenant a monetary award, in the amount below, that I have determined to be commensurate with what the Tenant has presented.

As the Tenant was partially successful in these claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenant

Item	Amount
Loss of yard	\$600.00
Loss of carport	\$600.00
Loss of deck	\$600.00
Loss of quiet enjoyment	\$600.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$2,500.00

Conclusion

The Tenant is provided with a Monetary Order in the amount of **\$2,500.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 12, 2022

Residential Tenancy Branch